Complaint counsel's Nonbinding Statement suggests that ABC's network exclusivity means that CBS, NBC, and their affiliates will stop televising programs and advertisements on Saturday afternoons. That is obviously not true. NBC has exclusive rights to all of Notre Dame's home football games. Both it and CBS can and will offer exclusive Saturday afternoon telecasts of major league baseball, U.S. Open tennis, premier horse racing, golf and other sports events, together with other programming.[12/] ABC's network exclusivity will not reduce the total hours of telecasts offered by the networks, but rather will encourage greater diversity among them by enabling ABC to differentiate its own programming from that of others. The cases have repeatedly recognized that such diversity is a legitimate, procompetitive benefit of exclusivity in the distribution of intellectual property.[13/]

Time-Period Exclusivity. Among other things, time-period exclusivity reduces the likelihood that viewers of the CFA football games will turn away from ABC's telecasts to other football games during commercials or if the ABC game

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12/ Moreover, aside from network telecasts of sporting events, the amount of sports televised on Saturdays on cable and local stations is staggering.

13/ E.g., Theee Movies of Tarzana v. Pacific Theatres, Inc., 828 F.2d 1395, 1395 (9th Cir. 1987), cert. denied, 484 U.S. 1066 (1988).

unexpectedly becomes one-sided.[14] In effect, time-period exclusivity enables ABC to generate a larger and more predictable audience to sell to advertisers. As with any form of programming, advertisers would rather reach a large audience on a single program than advertise on multiple programs with smaller audiences, even if the sum of the smaller audiences is equal to or, in some cases, even greater than the single large audience. Thus, by enabling ABC to reach a larger audience, the limited time-period exclusivity creates a genuine efficiency: It enhances the value of ABC's telecasts to its customers, the advertisers. The time-period exclusivity is therefore legitimate and procompetitive.[15]

Complaint counsel say that the time-period exclusivity cannot be treated as a "cognizable efficiency" because it excludes competing telecasters from showing attractive CFA games during the shielded time period. (Nonbinding Statement at 23.) But that is precisely what this exclusivity provision is designed to achieve so that ABC will have developed a program that will be more beneficial and desirable to advertisers. Ironically,

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[14] Many of these viewers will have been induced by ABC's investment in and promotion of its CFA football package to forego other activities to watch television on Saturday afternoon.

[15] Courts have repeatedly rejected antitrust challenges to similar exclusive contract arrangements. See, e.g., id.; Ralph C. Wilson Indus., Inc. v. Chronicle Broadcasting Co., 794 F.2d 1359 (9th Cir. 1986); Fleer Corp. v. Topps Chewing Gum, Inc., 658 F.2d 139 (3d Cir. 1981), cert. denied, 455 U.S. 1019 (1982); Lawlor v. National Screen Serv. Corp., 270 F.2d 146 (3d Cir. 1959), cert. denied, 362 U.S. 922 (1960).

complaint counsel recognize these procompetitive benefits because they specifically acknowledge that the restrictions in ABC's contract will enable ABC to achieve higher ratings for its telecasts than would otherwise be available.[16] Ratings are what telecasters sell to advertisers. Thus, when complaint counsel say that ABC's contracts enable it to generate higher ratings, they concede that those contracts enable ABC to create a more valuable product for its customers.

C. The Issues To Be Tried

The principal issues presented by the vertical agreements between the CFA and Capital Cities are these:

(1) Can complaint counsel prove that Capital Cities' contracts with the CFA enable Capital Cities to obtain or maintain market power that it would otherwise not have in the advertising market?

(2) Can complaint counsel prove that the limited exclusivity provisions in Capital Cities' contracts with the CFA do not serve any legitimate purpose?

(3) Can complaint counsel's attack on Capital Cities' contracts with the CFA be sustained when (a) the arguments used

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[16] Nonbinding Statement at 23. Complaint counsel also assert that the restrictions will result in reduced overall viewership of college football. Id. We expect the evidence to show the opposite. In any event, that is not the proper measure of the competitive significance of the restrictions.

against the contracts (e.g., they restrict telecasts on other outlets) can be applied to all exclusivity provisions, (b) complaint counsel take the position that any successful bidder for the contracts offered by the CFA (CBS, ABC, or someone else) would be guilty of violating the antitrust laws, and (c) the limited exclusivity provisions in those contracts are no more restrictive than those found in other television rights agreements?

## III. The CFA Has Not Violated Section 5

The CFA is a seller of programming to telecasters like Capital Cities. It competes with other suppliers of programs, including other sellers of rights to televise college football games. Capital Cities believes that the CFA has performed a useful, procompetitive and efficient function in offering to telecasters like Capital Cities a package of desirable rights. If, however, the CFA agreement could be anticompetitive, it would be because it created or enhanced market power in some relevant programming market, with the result that program prices exceed competitive levels. In that event, Capital Cities, as a buyer from the CFA, would be the victim of anticompetitive conduct by the CFA, not a beneficiary of it, and thus cannot be a proper respondent in this proceeding.

## A. The CFA Serves an Efficient and Procompetitive Purpose

Most of complaint counsel's Nonbinding Statement is legal argument attempting to analogize the CFA to the NCAA. But there are many fundamental differences between those two entities, including the following:

(1) The record developed during the 1982 trial in the NCAA case was found to support a conclusion that the sale of rights to televise college football games constituted a relevant product market. 468 U.S. at 111-112. Four years later, in 1986, the same district judge who had found that market in the NCAA case held that major changes in the sports and television industries gave rise to factual issues that precluded summary judgment that college football remained a relevant market. Association of Indep. Television Stations v. College Football Ass'n, 637 F. Supp. 1289, 1300-02 (W.D. Okla. 1986). Those changes have accelerated in the four years since 1986.

(2) The NCAA television plan covered all of college football. There was no alternative to dealing with the NCAA, and not surprisingly, the Supreme Court found that the NCAA faced no "competition from available substitutes." 468 U.S. at 115, n.55. The CFA, by contrast, includes only 64 colleges. It faces

substantial competition from other colleges, from CFA schools that contract with other telecasters, and from other sports and television events.

(3) No NCAA member was permitted to sell rights to televise its games outside of the NCAA television plan. 468 U.S. at 94. The CFA's contracts, by contrast, permit all of its members to sell rights to televise all of their games that are not televised by Capital Cities. Most CFA members (or the conferences to which they belong) sell television rights to their games outside of the CFA plan. The majority of televised college football games will be carried by telecasters other than Capital Cities. In effect, the CFA members compete against the CFA package.

(4) The NCAA dictated that all of its members participate in its television plan. Id. at 91-92. By contrast, CFA members are free to reject any contract between the CFA and a telecaster. Notre Dame did that when it rejected the CFA's agreement with ABC and signed a separate contract with NBC, just as other schools and conferences have done in the past. This is another way that the CFA competes against its members and that the CFA television package competes against other possible television arrangements.

(5) The NCAA had "potent" coercive powers that the CFA does not and cannot have. Id. at 90, 95, 106 & n.31. Possible sanctions for violating the NCAA television plan included the loss of NCAA membership. Since such membership was necessary for schools to participate in virtually any intercollegiate sport, NCAA sanctions could prove extraordinarily costly to the schools. By contrast, the CFA has no power to punish any school for not participating in the CFA's television package.

(6) The NCAA did not "act as a selling agent for any school" or sell rights to televise games of its members. Instead, the negotiation of agreements with telecasters was left to the individual schools, except that the NCAA specified the terms on which its members were permitted to sell television rights for their games. Id. at 113. The CFA, by contrast, does not specify the terms on which its members may engage in individual transactions, but rather sells to the telecaster rights to carry a series of games selected by the telecaster from among all the games of the participating CFA members. By assembling a package of games from which the telecaster may choose the most attractive, the CFA has created a new and more valuable product.

The CFA's activities thus present new questions not decided in the NCAA case that must be analyzed in their own very different context.

By assembling a large "inventory" of games from which the telecaster may choose the most attractive, the CFA offers telecasters one way (among others) of acquiring rights to televise games. By allowing the telecaster to choose from a large number of games of schools throughout the country, the CFA package enables the telecaster to offer to viewers, and thus to advertisers, a regular selection of both regional telecasts of games of special interest and national telecasts of games of broader interest. By allowing the telecaster to choose those games as the season unfolds, the CFA package reduces the risks inherent in any arrangement where the telecaster must select the game to televise so far in advance that viewers may lack any current interest by the time of the telecast.[17/]

This type of package is particularly attractive to networks because a network quality college football series

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17/ Conceivably, a telecaster could assemble a comparable package without the aid of the CFA. To do so, however, it would have to enter into separate agreements with at least 5 different conferences and 20 independent schools. Those 25 contracts would have to give the telecaster the same flexibility to choose the most attractive games for its viewers and advertisers. Putting together such a package of separate contracts would at best be a daunting and unprecedented task. The evidence will most likely show that the CFA is necessary as a practical matter to permit the creation of such a package, and it will certainly show that the CFA significantly reduces the costs and difficulty of assembling such a package.

requires games of broad national or regional interest. While network telecasts of games of national and regional interest compete for viewers with games of local interest made available by competing telecasters, networks are not likely to be an efficient distributor for games of purely local interest.

The CFA package is offered to telecasters in competition with myriad other possible arrangements for televising games of CFA members. For example, a telecaster can offer to buy rights to televise games of individual teams or conferences, just as NBC purchased the rights to televise Notre Dame's home games and as ABC sought to acquire rights to Southeastern Conference games in 1986. In deciding which contracts to enter into, the CFA and its members compare the benefits of the CFA package with the benefits available from selling television rights in other ways, and they presumably pick the most attractive alternatives. Thus, 63 of the CFA members decided to participate in the arrangement negotiated between the CFA and ABC because that arrangement was more attractive than the alternatives -- not only CBS's bid for the CFA package, but also other alternatives available to the CFA members.

Capital Cities (and presumably other telecasters, like CBS, that have bid for and purchased the CFA package in the past) finds the CFA package to be attractive. Like the assembly of copyrights into a single package that the courts upheld in

Broadcast Music, Inc. v. CBS,[18] the assembly into a single package of rights to televise games of the participating CFA members creates a new product for the benefit of telecasters.[19]

The CFA's assembly and packaging function is plainly not a "naked restraint" or "inherently suspect"; and the Commission's truncated "rule of reason" analysis urged by complaint counsel is not appropriate in this proceeding. The CFA plan is so different from the old NCAA television plan that no reliance can be placed on the NCAA case to show that the CFA's agreements are a "naked restraint." It is indisputable that the CFA offers an aggregation of program options that is different from what any individual school or conference could offer. It is the buyers, such as Capital Cities, that value this aggregation. They think that they are getting a valuable product at a reasonable price. While it is conceivable that others, including

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[18] See 441 U.S. 1 (1979) (blanket license to use copyrighted musical works not per se violation of Sherman Act); 620 F.2d 930 (2d Cir. 1980) (on remand) (under rule of reason analysis, blanket license not unreasonable restraint on trade).

[19] Complaint counsel attempt to avoid the BMI analysis, not by discussing the BMI case but rather by focusing on the NCAA case. But the Supreme Court in the NCAA case distinguished the NCAA's plan from the package at issue in BMI on the grounds (i) that the NCAA did not act as a selling agent, (ii) that the NCAA schools were prohibited from selling rights to televise their games outside the plan, and (iii) that the NCAA faced no "interbrand" competition. 468 U.S. at 113-15. (Indeed, the Court expressly noted that "collective action" similar to that undertaken by the NCAA might be appropriate if the NCAA faced interbrand competition, as the CFA plainly does here. Id. at 115, n.55.) None of these grounds for distinguishing the BMI case applies here.

networks, could attempt to emulate the CFA's aggregation, there is no experience to suggest that it could be done, and the effort would surely not be as efficient as the CFA program. Under these circumstances, the CFA has a genuine, valid efficiency justification, see Mass. Board, 110 F.T.C. at 604, and the overall competitive effects of the CFA agreements must be analyzed in detail. That, in turn, requires identifying the relevant markets in television programming and advertising and determining whether market power in one or more markets has been created or enhanced.

### B. Even if the CFA Had Violated Section 5, Capital Cities Is Not a Proper Respondent

The CFA's arrangements would be unlawful only if, among other things, the CFA had market power in a relevant "upstream" market for television programming rights and used that market power to extract supracompetitive prices from its customer, Capital Cities.[20] In that event, however, Capital Cities would be the victim of the CFA's violation and would not be a proper respondent in this proceeding.

In their Nonbinding Statement, complaint counsel ignore the fact that Capital Cities would be victimized by any violation of Section 5 by the CFA. Instead, they make a formalistic

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[20] As shown, Capital Cities competes with other telecasters in a "downstream" advertising market where, in effect, the audiences that watch television programs are sold to advertisers.

argument in support of their claims against Capital Cities that turns on the fact that Capital Cities is a party to the agreements by which the CFA allegedly exploits its market power. That argument fails as a matter of law.

Complaint counsel argue that parties to anti-competitive agreements may be found liable as co-conspirators. (Nonbinding Statement at 25.) But the cases they cite, unlike the present case, involve situations in which the alleged "downstream" co-conspirators gained from the market power that the agreement created or maintained, and they took affirmative steps pursuant to the unlawful agreement that injured competition.[21/] Indeed, it has long been the law that one can be

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[21/] See Fragale & Sons Beverage Co. v. Dill, 760 F.2d 469 (3d Cir. 1985) (reversing summary judgment for defendants in private action alleging conspiracy by two regional distributors and one local distributor to drive the local distributor's competitor out of business); Com-Tel, Inc. v. DuKane Corp., 669 F.2d 404 (6th Cir. 1982) (affirming jury's finding of a naked conspiracy orchestrated by distributor in order to achieve a "horizontal" impact on competition with another distributor); Ron Tonkin Gran Turismo, Inc. v. Fiat Distribs., Inc., 637 F.2d 1376 (9th Cir.), cert. denied, 454 U.S. 831 (1981) (affirming summary judgment for defendant in exclusive dealing case because plaintiff dealer failed to show that defendant dealer had market power).

The cases cited in footnote 36 of complaint counsel's Nonbinding Statement have no relevance to the current proceeding. In stark contrast to the instant case, all of those cases involved conspiracies to drive particular competitors out of the market for no legitimate purpose. Klor's, Inc. v. Broadway-Hale Stores, Inc., 359 U.S. 207 (1959), for example, involved a naked conspiracy organized by a department store with monopsony power to drive a competitor out of business. Plainly, this is not such a case. Complaint counsel do not and cannot allege that either the CFA or Capital Cities is trying to drive competing

(Footnote continued on following page)

found liable as a co-conspirator under the antitrust laws only if he shares the anticompetitive objectives of the unlawful agreement. E.g., American Tobacco Co. v. United States, 328 U.S. 781, 809-10 (1946) ("unity of purpose"). Thus, Capital Cities might be deemed to be a proper respondent if its agreements with the CFA gave it market power in the advertising market in which it does business. But absent proof of such market power, Capital Cities is unable to reap any anticompetitive fruits of the CFA's arrangement and would simply be injured on account of the CFA's conduct.

Complaint counsel argue that Capital Cities benefits from the limited exclusivity provisions in its agreement with the CFA. (Nonbinding Statement at 26-27.) But those provisions serve legitimate purposes. As complaint counsel concede, they enlarge Capital Cities' CFA football audience and thus increase the value of the product it offers to advertisers. The benefits enjoyed by Capital Cities reflect the efficiencies of the agreements, not any anticompetitive effects in the market where it is a competing seller. Saying that Capital Cities benefits from agreements that make it possible for the CFA to create or enhance market power in a market where Capital Cities buys

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[21] (Footnote continued from preceding page)
telecasters or colleges out of any market. Indeed, all telecasters were able to bid for the contracts at issue here, and CBS, one of ABC's competitors, won the CFA contract in 1986. Moreover, those contracts serve legitimate, procompetitive purposes.

programming is like saying that a customer of a price fixing cartel benefits from the opportunity to buy the cartel's product. Unless the customer obtains some anticompetitive benefit -- market power in a market in which it does business -- it cannot be held responsible for any unlawful activities of the cartel.

### C. The Issues To Be Tried

The principal issues raised by the relationship between the CFA and its members include the following:

(1) Can complaint counsel prove that the CFA has market power in the market in which it sells rights to televise college football games?

(2) If so, is Capital Cities a victim of that market power, resulting in its payment of supracompetitive prices for television programs?

(3) By enabling telecasters to purchase the right to choose the most attractive of a large portfolio of games as the season unfolds, has the CFA performed a legitimate function of assembling a new product?

(4) Does the commercial success of the CFA's agreements reflect the fact that they provide a more efficient means of facilitating telecasts of football games of CFA members?

Respectfully submitted,

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November 5, 1990

**CERTIFICATE OF SERVICE**

I hereby certify that I have this 5th day of November, 1990, caused a copy of the foregoing Capital Cities' Nonbinding Statement to be served by hand upon each of the following:

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Randolph D. Moss

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UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION



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|---|---|---|
| In the Matter of | ) | |
| | ) | |
| COLLEGE FOOTBALL ASSOCIATION, an unincorporated association, | ) | |
| | ) | |
| and | ) | Docket No. 9242 |
| | ) | |
| CAPITAL CITIES/ABC, INC., a corporation. | ) | |

**CFA'S ANSWERS TO**
**COMPLAINT COUNSEL'S INTERROGATORIES**

**INTRODUCTORY STATEMENT**

Most of these interrogatories are contention interrogatories, and CFA's ultimate answers to them will require full evaluation of the claims against CFA. The basis for these claims has just begun to be disclosed in Complaint Counsel's answers to Capital Cities' First Interrogatories, served March 7. However, further factual and legal investigation by CFA, including evaluation of the massive amounts of documents recently obtained, and consultations with expert witnesses, is required. Nevertheless, as to interrogatories to which CFA has formulated even a preliminary view as to its position, that position will be given here, subject to further analysis and review.

**INTERROGATORY NO. 1.** Please identify each CFA official or agent (and his title or position at the time and currently) separately by the reasons covered in the CFA contracts, (i.e., 1984, 1985-86, 1987-90, and 1991-95) who:

(a) negotiated for the over-the-air network telecast rights sold by CFA;

(b) analyzed or calculated information for the possible or proposed terms for those contract rights, including performing market analyses or projecting ratings, advertising rates, or revenues; and

(c) approved or ratified proposed terms for those rights contracts.

**ANSWER TO INTERROGATORY NO. 1.**

1984 Warner Alford, Athletic Director, University of Mississippi;

Gene Corrigan, then Athletic Director, University of Notre Dame (currently Commissioner, Atlantic Coast Conference);

DeLoss Dodds, Athletic Director, University of Texas;

Dan Gibbens, Professor of Law, University of Oklahoma;

Gene Hooks, Athletic Director, Wake Forest University;

Cecil Ingram, then Athletic Director, Florida state University (currently Athletic Director, University of Alabama)

Glen Tuckett, Athletic Director, Brigham Young University;

Chuck Neinas, Executive Director, CFA.

1985-86 Warner Alford, Athletic Director, University of Mississippi;

Gene Corrigan, then Athletic Director, University of Notre Dame (currently Commissioner, Atlantic Coast Conference);

DeLoss Dodds, Athletic Director, University of Texas;

Dan Gibbens, Professor of Law, University of Oklahoma;

Cecil Ingram, then Athletic Director, Florida state University (currently Athletic Director, University of Alabama)

Glen Tuckett, Athletic Director, Brigham Young University;

Chuck Neinas, Executive Director, CFA;

Mike Trager, Sports Marketing & Television International.

1987-90 Warner Alford, Athletic Director, University of Mississippi;

Gene Corrigan, then Athletic Director, University of Notre Dame (currently Commissioner, Atlantic Coast Conference);

DeLoss Dodds, Athletic Director, University of Texas;

Cecil Ingram, then Athletic Director, Florida state University (currently Athletic Director, University of Alabama)

Carl James, Commissioner, Big Eight Conference;

Glen Tuckett, Athletic Director, Brigham Young University;

Chuck Neinas, Executive Director, CFA;

Mike Trager, Sports Marketing & Television International.

1991-95 Rev. E. William Beauchamp, Executive Vice President, University of Notre Dame;

Jake Crouthamel, Athletic Director, Syracuse University;

DeLoss Dodds, Athletic Director, University of Texas;

Gene Hooks, Athletic Director, Wake Forest University;

Cecil Ingram, then Athletic Director, University of Alabama;

Carl James, Commissioner, Big Eight Conference;

Glen Tuckett, Athletic Director, Brigham Young University;

Chuck Neinas, Executive Director, CFA.

Mike Trager, Sports Marketing & Television International.

Messrs. Neinas and Trager were primarily responsible for analyzing advertising rates and revenues. The Television Committee was responsible for the development of the CFA Television Plan, that was subsequently approved by the membership, and was utilized as a guideline in negotiating terms of the network agreement.

Standard procedure is for the Television Committee to develop the basics of a plan that is subsequently approved by the membership. The Television Committee is then authorized to negotiate on behalf of the membership. Those members desiring to participate in the CFA Television Plan and the agreements subsequently developed by the Television Committee are required to sign an institutional commitment form.

**INTERROGATORY NO. 2.** Please identify each CFA official or agent (and his title or position at the time and currently) separately by the seasons covered in the CFA contracts (i.e., 1984, 1985-86, 1987-90, and 1991-95) who:

(a) negotiated for the cable telecast rights sold by CFA;

(b) analyzed or calculated information for the possible or proposed terms for those contract rights, including performing market analyses or projecting ratings, advertising rates, or revenues; and

(c) approved or ratified proposed terms for those rights contracts.

**ANSWER TO INTERROGATORY NO. 2.** The same individuals listed as negotiating in 1984, 1985-86, 1987-90 and 1991-95 also were involved in negotiating with ESPN with the following exception: relative to the 1991-1995 ESPN agreement, Harvey Schiller, then Commissioner, Southeastern Conference (currently Executive Director, U.S. Olympic Committee) was involved in the ESPN negotiations and Father Beauchamp was not.

**INTERROGATORY NO. 3.** Do you contend that because the CFA television plan is "voluntary" that it cannot be illegal under §5 of the Federal Trade Commission Act? (See CFA's Nonbinding Statement at 7).

**ANSWER TO INTERROGATORY NO. 3.** Yes, the truly voluntary nature of participation in the CFA television plan results in a legal arrangement.

**INTERROGATORY NO. 4.** Please identify separately each alleged "factual inaccurac[y]" in Complaint Counsel's Nonbinding Statement and state what you believe is the actual fact. (See CFA's Nonbinding Statement at 9.)

**ANSWER TO INTERROGATORY NO. 4.**

(a) Complaint Counsel states at page 4 of the Nonbinding Statement that CFA was formed in 1977 for the purpose of lobbying, and suggests that CFA's activities have been centered upon gaining and maintaining control over telecasts. As stated in detail in CFA's Motion for Summary Decision, CFA was formed to bring together major football playing institutions, having similar goals and objectives, so that they could address concerns of mutual interest and importance, and particularly promote and enhance the image of college football. The CFA did not become involved in football television until years after its formation. CFA does not exert efforts at "gaining and maintaining control" over football telecasts. CFA's television plan is entirely voluntary, and CFA does not seek to exert control over the football telecasting rights of its members or any other football playing university or college.

(b) Complaint Counsel states at page 4, note 6 of the Nonbinding Statement that CFA has made extended efforts to persuade the Big Ten and Pac-10 Conferences to join with it in forming a single telecast marketing organization for major college football. In fact, CFA and the Big Ten and Pac-10 Conferences at one time mutually explored, and mutually rejected the prospect of joining in a single football television plan.

(c) At pages 2-3 of the Nonbinding Statement Complaint Counsel asserts that CFA's plan has the same anticompetitive features as the agreements condemned in *Board of Regents*. The differences between CFA's television plan and NCAA's television plan are set forth in CFA's Nonbinding Statement at pages 7-9.

(d) At page 5 of the Nonbinding Statement Complaint Counsel asserts that CFA is only nominally a nonprofit association. CFA has addressed this in the Motion for Summary Decision.

(e) At page 9 of the Nonbinding Statement Complaint Counsel asserts that CFA sets a limit on the amount of airtime devoted to CFA football. This is incorrect.

(f) At pages 9-10 of the Nonbinding Statement Complaint Counsel asserts that CFA sets a limit on the number of CFA games aired by the CFA cable telecaster. This is incorrect.

(g) At page 10 of the Nonbinding Statement Complaint Counsel asserts that all telecasts which are not televised through the network and national cable packages are relegated to local and regional broadcasts. In fact, CFA's members are permitted to sell the games for national cable broadcasts or syndicated over-the-air broadcasts, and such games have been televised nationally.

(h) At page 10 of the Nonbinding Statement Complaint Counsel asserts that telecasts outside the network and cable packages are permitted only during the early afternoon. This is incorrect. Local telecasts are freely permitted any time, day or night.

(i) At page 22 of the Nonbinding Statement Complaint Counsel asserts that CFA's television plan virtually eliminates telecasts of competing games during key viewing hours. This is incorrect.

(j) At page 10 of the Nonbinding Statement Complaint Counsel asserts that CFA's negotiation of rights fees prevents price competition for the telecasts. This is incorrect.

While the above paragraphs represent significant inaccuracies in Complaint Counsel's Nonbinding Statement, CFA does not agree that all other factual statements within the Nonbinding Statement, and particularly the inferences and implications evidently intended, are correct.

**INTERROGATORY NO. 5.** Please identify what you believe to be the relevant product and geographic markets in which sales are made for CFA college football telecast rights.

**ANSWER TO INTERROGATORY NO. 5.**

(a) **Relevant Product Market**: Subject to the qualifications of its introductory statement, CFA presently identifies the relevant product market as the sale to

telecasters or syndicators of programming which will attract an audience with demographic characteristics similar to the demographics of the audience for college football available during the same part of the year as college football. Based on preliminary analysis, this would include all football programming (including especially NFL professional football), many additional sports events, including major league baseball and the World Series, professional and college basketball, and tennis; and other non-sports programming as well.

(b) **Geographic Market**: CFA is studying the question of the parameters of the relevant geographic market, and has not yet determined whether the geographic market is best evaluated as (a) national, or (b) regional and local markets throughout the nation.

**INTERROGATORY NO. 6.** Please identify what you believe to be the relevant product and geographic markets in which sales are made for advertising time on CFA college football telecasts.

**ANSWER TO INTERROGATORY NO. 6.** CFA has not participated in or studied any market for sales of advertising on CFA college football telecasts, and has not at this stage of these proceedings formulated a view as to the nature of such a market.

**INTERROGATORY NO. 7.** Please describe separately the proper measure(s) of output in the relevant markets you